

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

JANE DOE on behalf of herself and her minor child; JANE BOE, Sr. on behalf of herself and her minor child; JOHN COE, Sr. and JANE COE, Sr. on behalf of themselves and their minor children; JOHN FOE, Sr. on behalf of himself and his minor child; JANE GOE, Sr. on behalf of herself and her minor child; JANE LOE on behalf of herself and her medically fragile child; JANE JOE on behalf of herself and her medically fragile child; CHILDRENS HEALTH DEFENSE, and all others similarly situated,

Plaintiffs,

-against-

HOWARD ZUCKER, in his official capacity as Commissioner of Health for the State of New York; ELIZABETH RAUSCH-PHUNG, M.D., in her official capacity as Director of the Bureau of Immunizations at the New York State Department of Health; the NEW YORK STATE DEPARTMENT OF HEALTH; THREE VILLAGE CENTRAL SCHOOL DISTRICT; CHERYL PEDISICH, acting in her official capacity as Superintendent, Three Village Central School District; CORINNE KEANE, acting in her official capacity as Principal Paul J. Gelinas Jr. High School, Three Village Central School District; LANSING CENTRAL SCHOOL DISTRICT; CHRIS PETTOGRASSO, acting in her official capacity as Superintendent, Lansing Central School District; CHRISTINE REBERA, acting in her official capacity as Principal, Lansing Middle School, Lansing Central School District; LORRI WHITEMAN, acting in her official capacity as Principal, Lansing Elementary School, Lansing Central School District; PENFIELD CENTRAL SCHOOL DISTRICT; DR. THOMAS PUTNAM, acting in his official capacity as Superintendent, Penfield Central School District; SOUTH HUNTINGTON SCHOOL DISTRICT; DR. DAVID P. BENNARDO, acting in his official capacity as Superintendent, South Huntington School District; BR.

**DECLARATION**

Docket No. 20-CV-0840  
(BKS) (CFH)

DAVID MIGLIORINO, acting in his official capacity as Principal, St. Anthony's High School, South Huntington School District; ITHACA CITY SCHOOL DISTRICT; DR. LUVELLE BROWN, acting in his official capacity as Superintendent, Ithaca City School District; SUSAN ESCHBACH, acting in her official capacity as Principal, Beverly J. Martin Elementary School, Ithaca City School District; SHENENDEHOWA CENTRAL SCHOOL DISTRICT; DR L. OLIVER ROBINSON, acting in his official capacity as Superintendent, Shenedehowa Central School District; SEAN GNAT, acting in his official capacity as Principal, Koda Middle School, Shenendehowa Central School District; ANDREW HILLS, acting in his official capacity as Principal, Arongen Elementary School, Shenendehowa Central School District; COXSACKIE-ATHENS SCHOOL DISTRICT; RANDALL SQUIER, Superintendent, acting in his official capacity as Superintendent, Coxsackie-Athens School District; FREYA MERCER, acting in her official capacity as Principal, Coxsackie Athens High School, Coxsackie-Athens School District; ALBANY CITY SCHOOL DISTRICT; KAWEEDA G. ADAMS, acting in her official capacity as Superintendent, Albany City School District; MICHAEL PAOLINO, acting in his official capacity as Principal, William S. Hackett Middle School, Albany City School District; and all others similarly situated,

Defendants.

ADAM I. KLEINBERG, an attorney duly admitted to practice law in the State of New York and within this judicial district, declares that the following statements are true and correct under the penalty of perjury:

1. I am a member of the law firm SOKOLOFF STERN LLP, counsel for defendants South Huntington Union Free School District s/h/a South Huntington School District, David P. Bennardo, Three Village Central School District, Cheryl Pedisich, Corinne Keane, Ithaca City

School District, Dr. Luvelle Brown, Susan Eschbach, Albany City School District, Kaweeda G. Adams, and Michael Paolino in this action.

2. I am familiar with the facts and circumstances related to this action and submit this declaration in support of defendants' motion to dismiss plaintiffs' complaint.

3. The following exhibits are relevant to defendants' motion to dismiss and are complete and accurate copies of what they purport to be.

4. Attached as Exhibit A is a copy of plaintiffs' Summons and Complaint, filed on July 27, 2020.

5. Attached as Exhibit B is a copy of the Advisory Committee on Immunization Practices General Recommendations Work Group ("ACIP") guidelines.

6. Attached as Exhibit C is a copy of *Appeal of E.Y.*, N.Y. Commissioner of Education Decision No. 17,891.

7. Attached as Exhibit D is a copy of *Appeal of S.G.*, N.Y. Commissioner of Education Decision No. 17,830.

8. Attached as Exhibit E is a copy of *Appeal of a Student with a Disability*, N.Y. Commissioner of Education Decision No. 17,822.

9. Attached as Exhibit F is a copy of *Appeal of W.G and C.A.*, N.Y. Commissioner of Education Decision No. 17,839.

10. Attached as Exhibit G is a copy of *Appeal of C.H.*, N.Y. Commissioner of Education Decision No. 17,832.

11. Attached as Exhibit H is a copy of *Appeal of a Student with a Disability*, N.Y. Commissioner of Education Decision No. 16,667.

12. Attached as Exhibit I is a copy of *Appeal of McGann*, N.Y. Commissioner of Education Decision No. 12,800.

13. Attached as Exhibit J is a copy of *Appeal of D.F.*, N.Y. Commissioner of Education Decision No. 16,132.

14. Attached as Exhibit K is a copy of the June 14, 2019 New York State Department of Health Statement on Legislation Removing Non-Medical Exemptions from School Vaccination Requirements which can be found at:

<https://www1.nyc.gov/assets/doh/downloads/pdf/dc/removal-of-nonmedical-exemption-school.pdf>.

15. Attached as Exhibit L is a copy of the procedures issued by the New York State Department of Health for the review of requests for medical exemptions which can be found at:

[https://www.health.ny.gov/professionals/doctors/conduct/docs/medical\\_exemption\\_review\\_procedures\\_for\\_schools.pdf](https://www.health.ny.gov/professionals/doctors/conduct/docs/medical_exemption_review_procedures_for_schools.pdf)

WHEREFORE, the moving defendants respectfully request that the Court dismiss this action in its entirety with prejudice as against it, together with such other and further relief as this Court deems just, equitable, and proper.

Dated: September 3, 2020  
Carle Place, New York

**SOKOLOFF STERN LLP**

*Attorneys for Defendants*

South Huntington Union Free School District  
s/h/a South Huntington School District,  
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Luvelle Brown, Susan Eschbach, Albany  
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